



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, July 27, 2023
Department A – Courtroom #11
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [18-14316](#)-A-13 **IN RE: ALLISON HOPKINS**
[FW-3](#)

MOTION TO AVOID LIEN OF HUNG DUONG
6-23-2023 [\[49\]](#)

ALLISON HOPKINS/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This matter will be called out of order and heard at the end of the 9:30 a.m. calendar.

2. [23-10819](#)-A-13 **IN RE: JUAN BERBER RAMIREZ AND YUDIANA HERNANDEZ BERBER**
[SKI-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-22-2023 [\[60\]](#)

TD BANK, N.A./MV
PETER BUNTING/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On June 28, 2023, the debtors filed a non-opposition to the motion. Doc. #70. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, TD Bank, N.A., successor in interest to TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to the repossession and sale of a 2016 Honda Civic, VIN 2HGFC2F56GH533848 (the "Vehicle"). Doc. #60.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors are in default under their contract by not tendering five payments owed to Movant from February 15, 2023 through June 15, 2023. Decl. of Jessela Amos at ¶ 7, Doc. #64. Movant has produced evidence that the debtors are delinquent by \$1,735.89, including late fees of \$34.04. Amos Decl. at ¶ 7, Doc. #64; Ex. E, Doc. #66. The last payment received from the debtors was on January 27, 2023, and was applied to the payment due on January 15, 2023. Amos Decl. at ¶ 7, Doc. #64; Ex. E, Doc. #66.

In addition, the court has confirmed the debtors' First Modified Chapter 13 Plan ("Plan") that surrenders the Vehicle. Plan, Doc. #43; Civil Minutes, Doc. #79. Granting relief from the automatic stay allows Movant to retake possession of the Vehicle as intended by the debtors' Plan. Also, the debtors do not oppose the relief requested and assert that the Vehicle was stolen and damaged by fire. Doc. #70. An insurance claim is pending. Id.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to repossess and sell the Vehicle pursuant to applicable law and to use the proceeds from the sale to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors do not oppose the motion and the debtors' Plan provides for surrender of the Vehicle.

3. [23-10232](#)-A-13 **IN RE: SHAUN SESTINI**
[MHM-2](#)

MOTION TO DISMISS CASE
6-23-2023 [\[42\]](#)

MICHAEL MEYER/MV
DANIEL KING/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to August 17, 2023, at 9:30 a.m.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

The debtor timely filed written opposition on July 7, 2023. Doc. #52. The court is inclined to continue the trustee's motion to dismiss to August 17, 2023, at 9:30 a.m., to be heard in connection with the debtor's motion to confirm plan (DK-4) also set for hearing on that date and time.

MOTION TO DISMISS CASE
6-26-2023 [\[31\]](#)

MICHAEL MEYER/MV

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #31. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to provide Trustee with any requested documents and file complete and accurate schedules. Id. The debtor's Schedule A/B, Schedule C, Schedule D, Schedule E/F and Schedule I are incomplete and/or inaccurate, and the debtor's chapter 13 plan is blank. Id. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to file complete and accurate schedules and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4).

A review of the debtor's Schedules A/B and D shows that the debtor's real property is encumbered. The debtor has not claimed any exemptions in his property. Should the debtor choose to amend Schedule C exemptions, it does not appear that there would remain non-exempt equity for the benefit of unsecured creditors. In addition, a review of the court's docket indicates that the debtor has not appeared at the § 341 meeting of creditors held on June 13,

2023. Therefore, the court determines that dismissal rather than conversion is in the best interest of creditors of the estate.

Accordingly, the motion will be GRANTED, and the case dismissed.

5. [22-12063](#)-A-13 **IN RE: SHAWNA RUST**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-21-2023 [\[25\]](#)

TOYOTA LEASE TRUST/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; denied in part.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

As a procedural matter, the certificate of service (Doc. #30) does not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, the movant has failed to include a DCN on the certificate of service. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

The movant, Toyota Lease Trust, as serviced by Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Mazda CX-30, VIN #3MVDMBDLXMM305089 (the "Vehicle"). Doc. #25.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor is in default under the terms of a lease agreement ("Lease Agreement") for the purchase of the Vehicle by failing to make at least four post-petition monthly payments. Decl. of Debra Knight, Doc. #27; Exs. A & C, Doc. #28. Movant has produced evidence that the debtor is delinquent by at least \$1,998.24. Ex. D, Doc. #28. The evidence also shows that Movant cannot verify the debtor's insurance on the Vehicle. Knight Decl., Doc. #27.

However, the court does not find relief from stay is proper under § 362(d)(2). The debtor has no equity in the Vehicle because the debtor's possession of the Vehicle stems from a Lease Agreement with Movant that matures on September 23, 2024, according to which the debtor does not own the Vehicle. Knight Decl., Doc. #27; Ex. A, Doc. #28. Movant has not met its burden demonstrating that the Vehicle is not necessary to an effective reorganization. Doc. #25; Knight Decl., Doc. #27. Here, the debtor's confirmed plan assumed the Lease Agreement, so it appears that the Vehicle was necessary for the debtor's effective reorganization as of March 9, 2023, the date the debtor's chapter 13 plan was confirmed. Plan, Doc. #3; Order, Doc. #22.

Movant also requests attorneys' fees in view of the debtor's assumption of the lease obligations for the Vehicle. The court will not award attorneys' fees because Movant has not provided evidence of the amount of attorneys' fees to be awarded. This determination is without prejudice to Movant seeking such fees at a later time.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The motion is denied pursuant to 11 U.S.C. § 362(d)(2). No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least four post-petition payments to Movant and there is lack of insurance on the Vehicle.

6. [22-12163](#)-A-13 **IN RE: TINA GARCIA**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
6-22-2023 [\[78\]](#)

SCOTT LYONS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at

least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Scott Lyons ("Movant"), counsel for Tina Louise Garcia ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$19,648.50 and reimbursement for expenses in the amount of \$1,002.28 for services rendered from December 9, 2022 through April 11, 2023. Doc. #78. Debtor's confirmed plan provides, in addition to \$1,574.00 paid prior to filing the case, for \$19,500.00 in attorney's fees to be paid through the plan. Plan, Doc. #11. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #78.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Here, Movant demonstrates services rendered relating to: (1) consulting with Debtor and gathering facts pre-petition; (2) preparing and amending Debtor's voluntary petition, schedules, and form 22-C; (3) preparing for and attending Debtor's 341 meeting of creditors; (4) preparing and prosecuting objection to creditor's proof of claim; (5) addressing motion to dismiss; (6) addressing objection to confirmation of plan; (7) communicating with Debtor by phone and email; and (8) general case administration. Ex. B, Doc. #80. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$19,648.50 and reimbursement for expenses in the amount of \$1,002.28 to be paid in a manner consistent with the terms of the confirmed plan.

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
6-23-2023 [\[41\]](#)

MICHAEL MEYER/MV
RICHARD STURDEVANT/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance
with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moves the court for a determination of final cure pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3002.1 with respect to the claim held by Rabobank, N.A ("Creditor"). Doc. #41. Trustee filed and served a Notice of Final Cure Payment pursuant to Rule 3002.1(f), but Creditor failed to respond. See Doc. #42.

Rule 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5). If the holder of a claim fails to provide any information as required by Rule 3002.1(g), Rule 3002.1(i) permits the court, after notice and a hearing, to preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless. Rule 3002.1(i)(1).

The court finds that Creditor failed to provide any information as required by Rule 3002.1(g) and will therefore preclude Creditor from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in this case pursuant to Rule 3002.1(i)(1). The court also finds that the debtor has cured the default on the loan with Creditor and that the debtor is current on payments to Creditor through April 2023.

Accordingly, this motion is GRANTED.

MOTION TO DISMISS CASE
6-27-2023 [\[25\]](#)

ARETE KOSTOPOULOS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by debtor that is prejudicial to creditors. Doc. #25. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) provide Trustee with any requested documents; and (3) make payments due under the plan. Id. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan.

Because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

9. [23-11094](#)-A-13 **IN RE: RICHARD GOMEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
6-27-2023 [[22](#)]

SUSAN SILVEIRA/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11:00 AM

1. [14-13417](#)-A-12 **IN RE: DIMAS/ROSA COELHO**
[23-1022](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING FOR
FAILURE TO PROSECUTE
6-29-2023 [[25](#)]

COELHO ET AL V. NATIONSTAR MORTGAGE, LLC

NO RULING.

2. [14-13417](#)-A-12 **IN RE: DIMAS/ROSA COELHO**
[23-1022](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-24-2023 [[1](#)]

COELHO ET AL V. NATIONSTAR MORTGAGE, LLC
NANCY KLEPAC/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.